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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,074	08/22/2003	Mario Felix de la Guardia	510.152B	8794

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EXAMINER

BOMBERG, KENNETH

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/646,074

Applicant(s)

DE LA GUARDIA, MARIO FELIX

Examiner

Kenneth Bomberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 20-24, 40, 44-46, 48, 51, 54, 69, 70, 72 and 75-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10, 12-19, 25-27, 30-39, 41-43, 47, 49, 50, 52, 53, 55-68, 71, 73 and 74 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/22 & 9/22- 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of the species of Figs. 9-14 in the reply filed on 11 January 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 6-9, 11, 20-24, 40, 44-46, 48, 51, 54, 69, 70, 72, and 75-80 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11 January 2005.

Response to Amendment

3. The proposed reply filed on 8 September 2004 was not entered because it was unsigned. Consequently, and as confirmed in applicant's response of 11 January 2005, this office action is directed to the claims as originally filed on 22 August 2003.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 10, 47, 49, 50, 52, 57, 58, and 63-67 are rejected under 35 U.S.C. 102(b) as being anticipated by de la Guardia (US 5,738,254).

In Figs. 1-4, de la Guardia teaches of a device for removable attachment (Fig. 1) to a fluid container (8) having a rigid handle portion (around bulb 7), bulb pump (7), air delivery conduit (5), head portion including threads (2), valve spout (3), rotation of bulb pump (7) being prevented by holding pump in place by clamping of the parts of housing between tube (5), barbed fitting (18), and check valve (6) (see column 4, lines 43-48).

In Reference to Claim 58

The spout (3) is a spray nozzle interpreted in view of the broadest reasonable definition of a spray nozzle.

In Reference to Claims 63-67

The fluid is not being positively recited and the device is capable of handling the fluids as claimed.

6. Claims 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Marchant et al. (US 2,548,487).

In Figs. 1-4, Marchant et al. teaches of a device having a rigid handle (1), collapsible pump (10), first end (proximal), second end portion (distal), valves (column 2, lines 30-34), a coupling mechanism (11), and a flexible hose air delivery means (12) according to the claims.

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7. Claims 47, 49, 52, 53, 55, 58, 63-68 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Stark (US 301,767).

Stark teaches a device (Fig. 1) having a fluid container (A), pump (B), air delivery conduit (a), head (S), and valve according to claims 47, 49, 52, 53, 55, 58, and 63-67,.

In Reference to Claims 63-67

The fluid is not being positively recited and the device is capable of handling the fluids as claimed.

Claim Rejections - 35 USC § 103

8. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over de la Guardia (US 5,738,254) in view of Marchant et al. (US 2,548,487).

De la Guardia teaches of a device substantially according to the claims but is silent with respect to a one directional intake valve for drawing air into the interior of the pump chamber according to the claims. Marchant et al. explicitly teaches of including an intake valve used in conjunction with an exhaust valve in order to form a pumping chamber with self actuating valves according to the claims.

It would have been obvious to one having ordinary skill in the art to have constructed the pump of de la Guardia incorporating the one directional intake valve as taught by Marchant et al. in order to form a pumping chamber with self actuating valves.

In Reference to Claim 3

De la Guardia teaches to prevent rotation of the squeeze bulb relative to the handle by holding the second end portion in a substantially fixed position relative to the handle portion (see column 4, lines 43-48 which teaches of clamping).

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over de la Guardia (US 5,738,254) in view of Stark (US 301,767).

De la Guardia teaches of a device substantially according to the claims but provides for a different lever, valve spout (3,9,12) arrangement than claimed. Stark teaches of a lever valve spout (S,T) arrangement per the claim. It would have been obvious to one having ordinary skill in the art to have substituted the lever valve spout arrangement of de la Guardia with the arrangement (S,T) of Stark as such a substitution would preclude the necessity of finger contact with the spout area to open the valve and thereby creating a more sanitary arrangement.

10. Claims 25-27, 30, 33-37, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colcord (US 280,798) in view of de la Guardia (US 5,738,254).

Colcord teaches a device (Fig. 1) having a pump (G), air delivery conduit (e), head (Figs. 2-3), and valve (E) substantially according to claims 25-27, 30, 33-37, and 43, but does not show the rotation of the collapsible pump reduced relative to a handle according to the claims. De la Guardia teaches to provide a handle (1) integrating a pump (7), which reduces rotation of the pump relative to the handle via a clamping of the

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pump within the handle (1) (see column 4, lines 43-48) in order to provide a handle for manipulating the device and the associated pump.

It would have been obvious to one having ordinary skill in the art to have included the handle (1) of de la Guardia in the device of Colcord in order to provide a handle for manipulating the device and associated pump as taught by de la Guardia. The resulting device would reduce rotation of the pump relative to the handle via a clamping of the pump within the handle.

In Reference to Claim 27

De la Guardia teaches to prevent rotation of the squeeze bulb relative to the handle by holding the second end portion in a substantially fixed position relative to the handle portion (see column 4, lines 43-48 which teaches of clamping).

In Reference to Claim 33

The examiner takes official notice that the use of a spray nozzle designed to produce foam is well known in the dispensing art. It would have been obvious to one having ordinary skill in the art to have provided such a nozzle where the product being dispensed would advantageously be desired to be dispensed as foam. One such product would be liquid soap.

In Reference to Claims 34-37

The device of Colcord as modified by de la Guardia is capable of dispensing the claimed products, and therefore meet the limitations as claimed.

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11. Claims 31-32 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colcord (US 280,798) and de la Guardia (US 5,738,254) as applied to respective claims 30 and 25 above, and further in view of Burke (US 4,313,569).

Colcord as modified by de la Guardia teaches of a device substantially according to claims 31 and 38 but fails to teach of the spray nozzle according to the claims. Burke teaches of a nozzle, usable on any appropriate device, which meets the claim limitations in order to “achieve the desired dispensing pattern, e.g. spray, stream, etc.” (see column 2, lines 34-39). It would have been obvious to one having ordinary skill in the art to have included the spray nozzle of Burke on the device of Colcord as modified by de la Guardia in order to achieve desired dispensing patterns as explicitly taught by Burke.

12. Claims 39, 41-42 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark (US 301,767) in view of de la Guardia (US 5,738,254).

Stark teaches a device (Fig. 1) having a pump (B), air delivery conduit (a), head (S), and valve substantially according to claims 39 and 41, but does not show the rotation of the collapsible pump reduced relative to a handle according to the claims. De la Guardia teaches to provide a handle (1) integrating a pump (7), which reduces rotation of the pump relative to the handle via a clamping of the pump within the handle (1) (see column 4, lines 43-48) in order to provide a handle for manipulating the device and the associated pump.

It would have been obvious to one having ordinary skill in the art to have included the handle (1) of de la Guardia in the device of Stark in order to provide a

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handle for manipulating the device and associated pump as taught by de la Guardia. The resulting device would reduce rotation of the pump relative to the handle via a clamping of the pump within the handle. The resulting device would also be capable of operation according to claim 42.

13. Claims 59, 60, 61, 62, and 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark (US 301,767) in view of Burk (US 4,313,569).

Stark teaches a device (Fig. 1) having a pump (B), air delivery conduit (a), head (S), and valve substantially according to claims 59, 60, 61, and 62, but does not show the particular spray nozzle as claimed. Burke teaches of a nozzle, usable on any appropriate device, which meets the claim limitations in order to “achieve the desired dispensing pattern, e.g. spray, stream, etc.” (see column 2, lines 34-39).

It would have been obvious to one having ordinary skill in the art to have included the spray nozzle of Burke on the device Stark in order to achieve desired dispensing patterns as explicitly taught by Burke.

In Reference to Claims 60 and 62

The examiner takes official notice that the use of a spray nozzle designed to produce foam is well known in the dispensing art. It would have been obvious to one having ordinary skill in the art to have provided such a nozzle where the product being dispensed would advantageously be desired to be dispensed as foam. One such product would be liquid soap.

Allowable Subject Matter

14. Claims 4, 5, 28, 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining prior art listed on the attached Notice of Reference Cited have been included because they show resilient pump bulbs used to pressurize containers to dispense liquids.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is 571-272-4922. The examiner can normally be reached on Monday, Tuesday, Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.B.



KENNETH BOMBERG
PRIMARY EXAMINER